

REMARKS

Claims 52-57 were pending prior to this Response. By the present communication, new claims 58 has been added, no claims have been added, and claims 52 and 57 have been amended to correct a typographical error and to recite Applicants' invention with greater particularity. Support for the amended claim language may be found, among others, at page 32, lines 11-24, and in Examples 3 and 11. Thus, the claim amendments do not constitute new matter, being fully supported by the Specification and original claims. Accordingly, claims 52-58 are currently pending in this application.

Rejection under 35 U.S.C. § 112, Second Paragraph

The rejection of claims 52-57 under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, is respectfully traversed. Specifically, the Examiner alleges that the claims are vague and indefinite because the method steps do not result in what the preamble indicates and thus it is unclear whether the claimed method is a method as recited in the preamble or a method as defined by the method steps. Applicants have amended claim 52 to recite Applicants' invention with greater particularity and to ensure that the method steps result in what the preamble indicates. Accordingly, withdrawal of the rejection is respectfully requested.

Rejection under 35 U.S.C. § 102

The rejection of claims 52 and 55-57 under 35 U.S.C. §102(a), as allegedly being anticipated by Krishnan et al (Reference AE of the IDS), is respectfully traversed. According to M.P.E.P. § 715.01(c), where the applicant is one of the co-authors of a publication cited against his or her application, he or she may overcome the rejection by filing a specific affidavit or declaration under 37 C.F.R. § 1.132 establishing that the article is describing applicant's own work. An affidavit or declaration by applicant alone, indicating that applicant is

the sole inventor and that the others were merely working under his or her direction, is sufficient to remove the publication as a reference under 35 U.S.C. 102(a). *In re Katz*, 687 F.2d 450, 215 USPQ 14 (CCPA 1982).

Applicants respectfully submit a declaration under 37 C.F.R. § 1.132 by Dr. Philip A. Beachy establishing that Krishnan et al. is describing the inventors' own work, and further indicating that Fred A. Pereira and Yuhong Qiu are not inventors in the subject application. Accordingly, Krishnan et al. is not available as prior art against the subject application, and withdrawal of the rejection is respectfully requested.


Conclusion

In view of the amendments and above remarks, it is submitted that the claims are in condition for allowance, and a notice to that effect is respectfully requested. The Examiner is invited to contact Applicant's undersigned representative if there are any questions relating to this application.

Check No. 578968 in the amount of \$225.00 is enclosed for the Petition for Extension of Time (2 Months) fee, however if any other fees are due, please charge any fees, or make any credits, to Deposit Account No. 07-1896.

Respectfully submitted,

Date: August 25, 2005


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